

GUIDANCE NOTE

Modern Slavery Act 2015

February 2017

This Guidance Note summarises the introduction into UK law of requirements for supply chain transparency brought about by the Modern Slavery Act 2015 (Act) and the need for organisations to take appropriate and proportionate action to ensure slavery and human trafficking is not taking place in its business or its supply chains.

Specifically, large businesses are required to disclose the steps they have taken to ensure their business and supply chains are free from modern slavery (that is, slavery, servitude, forced and compulsory labour and human trafficking) by way of publishing a Transparency in Supply Chain (“TISC”) Statement on their website.

Who has to make a Transparency in Supply Chain (“TISC”) Statement?

"Commercial organisations" that supply goods or services and have a minimum turnover of £36million will be required to produce a TISC Statement each financial year.

For the purposes of the Modern Slavery Act a “commercial organisation” is:

1. a body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom; or
2. a partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom; and
3. which has a turnover of £36million or above.

The TISC Statement is, as defined by the Act:-

- (a) a statement of the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place:-
 - (i) in any of its supply chains, and
 - (ii) in any part of its own business; or
- (b) a statement that the organisation has taken no such steps.

This does not mean the organisation must guarantee the entire supply chain is slavery free.

The requirement to publish a TISC Statement applies to an organisation with a financial year end on or after 31st March 2016. The Government's expectation is that Statements will be published within six months of the organisation's financial year end but in any event before the next financial year end. It does not have to be published with the Company Accounts.

The TISC Statement should be published on an organisation's website. There is no central monitoring or collation of Statements.

Government's Aim

The Act seeks to encourage businesses to be transparent about what they are doing and to incentivise better policies and processes to avoid modern slavery from occurring in supply chains.

It is essential that organisations ensure that their TISC Statement is as follows:

1. Underpinned by concrete actions it has taken or continues to take to address modern slavery in its supply chains, and
2. Able to withstand scrutiny from its key stakeholders, regulators and the public at large.

The Government's expectation is that organisations will build on their Statements year on year and that they will improve over time as organisations will be able to implement appropriate and proportionate responses across the organisation where they identify risks and any current or potential exposure.

Contents of the Statement

An organisation is free to determine how much or how little detail is contained in their TISC Statement.

The Act does not mandate what a slavery and human trafficking statement must contain, or require that it take any particular form. As guidance only, the Act sets out the following information that may be included in a TISC Statement under section 54(5). That is, information about:

- The organisation's structure, its business and its supply chains.
- Policies in relation to modern slavery.
- The due diligence processes in relation to slavery and human trafficking in its business and supply chains.
- The parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk.
- Effectiveness in ensuring slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate.
- The training about slavery and human trafficking available to its staff.

The Government has also published statutory guidance (Transparency in Supply Chains Etc, Home Office Guidance, 2016) on the reporting requirement which provides, among other things, advice on what may be included in a Statement against each of the above criteria. The statutory guidance also provides advice on how to respond to modern slavery if it is identified in supply chains in the UK and abroad and processes it could implement.

Approving the Statement

The individual(s) responsible for signing off the Statement depends on the structure of the organisation.

The Act states:

1. If the business is a body corporate other than a limited liability partnership, it must be approved by the board of directors (or equivalent management body) and signed by a director (or equivalent).
2. If the business is a limited liability partnership, it must be approved by the members and signed by the designated member.
3. If the business is a limited partnership registered under the Limited Partnerships Act 1907, it must be signed by a general partner.
4. If the business is any other kind of partnership, it must be signed by a partner.

Publishing the Statement

Organisations are required to publish their TISC Statement on its website and include a link to the Statement in a prominent place on its homepage. Alternatively, a copy must be provided to anyone who requests a copy of the Statement within 30 days.

There is the option to take a group approach to this requirement. Where, for example, a parent company and a subsidiary are both required to produce a Statement, one Statement may be produced and published on each website, as long as it covers the business and supply chains of both entities.

Enforcement / Effectiveness of TISC Statements

There are no fines or penalties for failing to prepare or publish a TISC Statement under the Act.

However, the Secretary of State has the power to bring civil proceedings in the High Court for an injunction requiring an organisation to comply with the disclosure requirement. A subsequent failure to comply with any Court Order to publish a Statement would risk being in contempt of Court, punishable by an unlimited fine. Commentators question how likely it is that injunction proceedings would be issued.

It is also to be seen how the Secretary of State would find out if a Statement had not been disclosed and this creates an argument that the statute has no realistic enforcement ability currently and is not an onerous obligation on organisations. Thus some commentators have suggested this is a box-ticking exercise.

Public scrutiny is expected to be the primary incentive for compliance with the Act and act as a check against inaccurate disclosure. Negative attention from the UK's independent anti-slavery commissioner, shareholders, customers, trade unions and civil society, such as non-governmental organisations and human rights groups, can affect a non-compliant organisation's reputation and share value, particularly if the organisation or sector is already in focus for labour and supply chain issues.

Action Points – Conducting a Risk Assessment

Prior to an organisation preparing and publishing a TISC Statement, it should conduct a risk assessment of its supply chain.

When conducting a risk assessment factors to consider including are:-

- Does the organisation operate in high risk countries or sectors?
- Does the organisation source goods or services from high risk countries or sectors?
- Does the organisation use third party labour providers?
- What controls does the organisation have in place for detecting, addressing and preventing modern slavery in its supply chains?
- Are the organisation's procurement policies and procedures tailored to address modern slavery?
- Has modern slavery previously been discovered in the organisation's supply chains?
- Does the organisation need to review existing supplier arrangements, particularly in high risk sectors or jurisdictions, and, where necessary, seek to amend agreements to ensure that suppliers are obliged to comply with the requirements of the Act and the organisation's code of conduct?
- Does the organisation need to update standard agreements to ensure suppliers and, in turn, their suppliers, will comply with the Act and the organisation's code of conduct (include appropriate warranties, undertakings and audit rights)?
- Are there other labour problems in the business or supply chains that do not amount to modern slavery (such as workers being paid below the living wage or subject to substandard working conditions), but have the potential to become an issue when the organisation publishes its statement?

A useful tool for assessing country risk is the Global Slavery Index published by the Walk Free Foundation (www.globalslaveryindex.org). The Index estimates the number of people in modern slavery in 167 countries.

Organisations should ensure that they have considered how they will respond to suppliers where modern slavery is detected and that they have or can put in place adequate sanctions and incentives to encourage appropriate behaviour. Organisations may use terms of tenders, contracts or joint venture agreements to set human rights standards and audit their supply chains to ensure they have implemented the human rights standards. Where severe breaches persist despite efforts to mitigate them, organisations should consider ending business relationships.

Organisations must make sure that they are in the best position to satisfy its disclosure requirements and underpin its TISC Statement with appropriate and proportionate action to ensure modern slavery is not taking place in its business or supply chains. Organisations should therefore continue to take steps to review its existing policies, procedures and approach to supply chain transparency and modern slavery.

Sometimes instances of modern slavery and trafficking will be purposefully hidden from the parent company and other commercial organisations within the supply chain. Where there is a risk of this happening, pro-active steps need to be taken to ensure that contractors pay and treat their staff appropriately.

How ABG can help?

We can help to prepare appropriate internal policies and statements for organisations to put in place to reflect its stance in relation to its obligations under the Modern Slavery Act 2015. This may include updating current policies or codes of conduct already adopted by the business and/or review its commercial terms and conditions and procurement process with suppliers to cover any obligations under the Act. We can work with organisations to identify and assess the most salient risks (if any) within your operations and supply chain.

The comments in this Guidance Note are of a general nature only. Full advice should be sought on any specific problems or issues.

**ASHTON BOND GIGG
FEBRUARY 2017**